

Google vs. Geico Adwords Trademark Infringement Lawsuit.

A consumer searching online for information about an insurance company should not be barred from seeing sponsored search advertisements from that company's competitors, Public Citizen said today in a "friend of the court" brief involving a lawsuit filed by Government Employees Insurance Company (GEICO).

GEICO has filed suit against two major Internet search engine operators, Google Inc. and Overture Services Inc., in an effort to suppress keyword advertising by competing insurance companies and online insurance brokers sponsored keyword triggered advertising on the Geico trademarked company name.



GEICO is claiming trademark infringement, alleging that the search engine operators violate trademark rights by allowing other insurance companies to advertise to consumers who display an interest in obtaining information relating in some way to GEICO by using the registered trademark "GEICO" as a search term.

In its amicus brief, Public Citizen asked the U.S. District Court for the Eastern District of Virginia to reject the lawsuit against Google and Overture, contending that there is nothing about "keyword" advertising that inherently violates trademark laws. Trademark law protects against the misuse of a mark to create confusion about whether particular goods and services emanate from the trademark holder.

"In this case, GEICO's assumption that any member of the public using the term 'GEICO' must be searching for the official company Web site is preposterous," said Paul Levy, the Public Citizen attorney who wrote the amicus brief.

"The user may be looking for information about the trademark, or about the trademark holder. He may be looking for historical information. The user may have a grievance about the trademarked item and want more information about other similar grievances."

Although its principal concern is to protect consumers who want to use non-commercial web sites to speak about corporations, Public Citizen is also interested in protecting the free speech rights of commercial entities, thus enabling companies to make information more available to consumers and increasing consumer choices while fostering competitive pressures that reduce product prices.

"The Internet provides a tremendous opportunity for ordinary citizens to express their views, and to have them heard, and by the same token, it provides an opportunity for consumers to obtain information that they may need to protect their economic and political interests," Levy said. "It is vitally important that the legal rules governing use of the Internet be crafted to provide a maximum opportunity for the free exchange of information."

Geico vs. Google AdWords Pay-Per-Click Story From Associated Press:

Google Inc. won a major legal victory Wednesday when a federal judge ruled that the search engine's advertising policy does not violate federal trademark laws.

U.S. District Judge Leonie Brinkema rejected a claim by auto insurance giant Geico Corp., which argued that Google should not be allowed to sell ads to rival insurance companies that appear whenever Geico's name is typed into the Google search box.

Mountain View, based Google derives a major portion of its revenues from selling ad space to businesses that bid on search terms - both generic words and names protected by trademark - used by people looking for information online about products and services.

Geico, a unit of billionaire Warren Buffett's Berkshire Hathaway Inc., claimed that Google's AdWords program, which displays the rival ads under a "Sponsored Links" heading next to a user's search results, confuses consumers and illegally exploits Geico's investment of hundreds of millions of dollars in its brand.

"There is no evidence that that activity alone causes confusion," Brinkema said, in granting Google's motion for summary judgment on that issue. The ruling, on what the parties considered the seminal issue in the case, came just three days after the

trial had begun.

David Drummond, Google's vice president and general counsel, called the decision a victory for consumers.

"It confirms that our policy complies with the law, particularly the use of trademarks as keywords," Drummond said. "This is a clear signal to other litigants that our keyword policy is lawful."

Other companies also suing Google

Another attorney suing Google for trademark infringement described Brinkema's ruling as "very narrow" and predicted it won't insulate the search engine from similar claims.

"It's not a sweeping declaration that makes it legal for Google to profit from the sale of keywords using other companies' trademarks," said David Rammelt, a New York lawyer representing American Blind and Wallpaper Factory Inc. in a trademark case. "I think you will see the other six or other seven cases like this forge ahead."

Google has asked a San Jose federal judge to dismiss American Blind's case.

In the Geico case, Google's attorneys argued that the company was simply acting as a publisher by allowing competitors' ads to appear on the same screen when the names of their rivals are typed in. Geico said it is losing customers who use the search engine to look for Geico but are led to other Web sites that win business at Geico's expense.

The Geico lawsuit, filed in May, came just weeks after Google said it planned to raise billions of dollars with an initial public stock offering. In filings with the Securities and Exchange Commission, the company said it would face financial risks if it was forced to limit sales of keyword ads to generic words.

The list of companies suing Google for trademark infringement include other major companies, such as insurance giant AXA Group, and smaller firms such as Plymouth, Mich.-based American Blind and Wallpaper.

Brinkema said the case would continue to move forward on one remaining issue, whether ads that pop up and actually use Geico in their text violate trademark law. Google contends that its policies expressly prohibit advertisers from using trademark names in the text of their ads. The search engine says it does its best to prevent ads that violate the policy from sneaking in, and that the advertisers would be liable for any trademark violation, not Google.

Geico attorney Charles Ossola said he was pleased the judge decided to continue proceedings on the second issue.

"I think the judge's ruling has given both parties part of what they were seeking," Ossola said.

Brinkema said she would halt the trial at this point to put a decision in writing and encouraged both parties to attempt to settle the remaining issues.

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An aside for consideration are the the distinct segments within the field of Search Engine Optimization. Clarification and separation are required in terms of paid search marketing, sponsored search advertising, pay per click, email marketing (spam), and the foundation of strategic internet marketing: Organic Search Engine Optimization (Organic SEO) are also referred to as Natural Search Engine Optimization (Natural SEO).

Key Organic Search Engine Optimization Facts:

- Keyword search is the 2nd most popular online activity, rapidly approaching the popularity of email retrieval.
- 90% of all new website visitors are delivered by a major search engine and/or directory.
- 98% of all keyword search activity results are powered by the big 4 search engines: Google, Yahoo, MSN and AOL.

- Keyword search results on Google, Yahoo, MSN and AOL are determined by search engine spiders and/or robot crawlers.
- Recent internet marketing studies confirm that keyword searchers prefer the organic results at a 6 to 1 ratio vs. pay-per-click sponsored search advertising listings.

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